



[3410-107]

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## DEPARTMENT OF AGRICULTURE

### Forest Service

**36 CFR Part 261**  
**RIN: 0596-AD08**

### Prohibitions Governing Fire

**AGENCY:** Forest Service, USDA.

**ACTION:** Direct Final Rule.

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**SUMMARY:** The Forest Service is making purely technical, nonsubstantive changes to Forest Service regulations. These regulations authorize issuance of an order prohibiting operation or use of any internal or external combustion engine without a spark arresting device that is properly installed, maintained, and in effective working order in accordance with the standards. The reference to the standard is obsolete and needs to be updated. The standard does not apply and needs to be removed.

**DATE:** The rule is effective [insert date of publication in the **FEDERAL REGISTER**].

**FOR FURTHER INFORMATION CONTACT:** Kenneth Pearson, Assistant Director for Enforcement and Liaison, at 703-605-4527 or via e-mail at [kenpearson@fs.fed.us](mailto:kenpearson@fs.fed.us).

Individuals who use telecommunication devices for the deaf may call the Federal Information Relay Service at 800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

### SUPPLEMENTARY INFORMATION:

The standard listed in paragraph (j)(1) is “Department of Agriculture, Forest Service Standard 5100-1a.” However, the current U.S. Forest Service Standard is 5100-1d. Since

this standard is continually being updated, the standard in paragraph (j)(1) is being revised to read, “U.S. Forest Service Standard 5100-1.”

The standard listed in paragraph (j)(2) is “Appropriate Society of Automotive Engineers (SAE) recommended practice J335(b) and J350(a).” However, SAE recommended practices cover test procedures for, rather than performance of, spark arresters. U.S. Forest Service Standard 5100-1 covers performance of spark arresters. Accordingly, paragraph (j)(2) is being removed, and paragraph (j)(1) is being designated as paragraph (j).

### **Good Cause Statement**

The Administrative Procedure Act (APA) exempts certain rulemaking from its public notice and comment requirements, including rulemaking involving “public property” (5 U.S.C. 553(a)(2)), such as federal lands managed by the Forest Service. Furthermore, the APA allows agencies to promulgate rules without public notice and comment when an agency for good cause finds that public notice and comment are “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)(B)).

In 1971, Secretary of Agriculture Hardin announced a voluntary waiver of the public property exemption from public notice and comment rulemaking under the APA (July 24, 1971; 36 FR 13804). Thus, agencies in the United States Department of Agriculture (USDA) generally provide public notice and comment in promulgating rules. However, the Hardin policy permits USDA agencies to promulgate final rules without public notice and comment when the agencies find for good cause that notice and comment procedures would be impracticable, unnecessary, or contrary to the public interest, consistent with 5 U.S.C. 553(b)(B). The courts have recognized this good cause exception to the Hardin policy and have indicated that since the public notice and comment requirement was adopted

voluntarily, the Secretary should be afforded “more latitude” in making a good cause determination. See Alcaraz v. Block, 746 F.2d 593, 612 (9<sup>th</sup> Cir. 1984).

The Department finds that good cause exists to exempt this rulemaking from public notice and comment pursuant to 5 U.S.C. 553(b)(B). This rulemaking merely updates a reference and removes an inapplicable reference. Public notice and comment are unnecessary for these minor, purely technical changes.

### **3. Regulatory Certifications**

#### *Environmental Impact*

This final rule revises law enforcement regulations governing certain activities on National Forest System lands. Forest Service regulations at 36 CFR 220.6(d)(2) exclude from documentation in an environmental assessment or environmental impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. The Department has determined that this final rule falls within this category of actions and that no extraordinary circumstances exist which require preparation of an environmental assessment or environmental impact statement.

This final rule has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. It has been determined that this final rule is not significant. This final rule will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This final rule will not interfere with an action taken or planned by another agency, nor will this final rule raise new legal or policy issues. Finally, this final rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of beneficiaries of those

programs. Accordingly, this final rule is not subject to review by the Office of Management and Budget under E.O. 12866.

This final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule makes purely technical, nonsubstantive changes to Forest Service regulations. Therefore, the Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by that Act because this final rule will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

#### *Federalism and Consultation and Coordination with Indian Tribal Governments*

The Department has considered this final rule under the requirements of E.O. 13132 on federalism. The Department has determined that this final rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further determination of federalism implications is necessary at this time.

This final rule does not have tribal implications per E.O. 13175, Consultation and Coordination with Indian Tribal Governments. Therefore, advance consultation with tribes is not required in connection with the final rule.

#### *No Takings Implications*

The Department has analyzed the final rule in accordance with the principles and criteria in E.O. 12630 and has determined that this final rule will not pose the risk of a taking of private property.

### *Civil Justice Reform*

The Department has reviewed this final rule under E.O. 12988 on civil justice reform. After adoption of this final rule, (1) all State and local laws and regulations that conflict with this final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

### *Unfunded Mandates*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), the Department has assessed the effects of this final rule on State, local, and tribal governments and the private sector. This final rule will not compel the expenditure of \$100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

### *Energy Effects*

The Department has reviewed this final rule under E.O. 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply. The Department has determined that this final rule does not constitute a significant energy action as defined in the E.O.

### *Controlling Paperwork Burdens on the Public*

This final rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply to this final rule.

## **List of Subjects in 36 CFR Part 261**

Law Enforcement, National Forests.

Therefore, for the reasons set forth in the preamble, the Forest Service is amending subpart B of part 261 of Title 36 of the Code of Federal Regulations to read as follows:

### **PART 261–PROHIBITIONS**

#### **Subpart B–General Prohibitions**

1. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

2. In §261.52, revise paragraph (j) to read as follows:

\* \* \* \* \*

#### **§ 261.52 Fire.**

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(j) Operating or using any internal or external combustion engine without a spark arresting device that is properly installed, maintained, and in effective working order in accordance with U.S. Forest Service Standard 5100-1.

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**Dated: September 14, 2012,**

Tim DeCoster,  
Acting Chief, Forest Service.

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